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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 ANTHONY RYAN PUGH,

11 Petitioner,

12 v.

13 PAT GLEBE,

14 Respondent.

CASE NO. C12-5690 BHS-JRC

REPORT AND
RECOMMENDATION

NOTED FOR: OCTOBER 26, 2012

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16 The District Court has referred this petition for a writ of habeas corpus to United States
17 Magistrate Judge, J. Richard Creatura. The authority for the referral is 28 U.S.C. § 636(b)(1)(A)
18 and (B), and local Magistrate Judge Rules MJR3 and MJR4.

19 Petitioner seeks relief from a state conviction. Petitioner filed the petition pursuant to 28
20 U.S.C. § 2254. The Court's review of petitioner's prior filings discloses that petitioner has
21 previously filed a federal habeas corpus petition challenging the same convictions he challenges
22 in this case. *See Pugh v. Glebe*, 10-cv-5634BHS/KLS. Petitioner's first petition was dismissed as
23 time barred. (*Pugh v. Glebe*, 10-5634BHS, ECF No. 20, (Report and Recommendation) and
24 21(Order)).

1 The Ninth Circuit has held that a dismissal of a petition as time barred renders subsequent
2 petitions second or successive. *McNabb v. Yates*, 576 F.3d 1028 (9th Cir. 2009). In the Ninth
3 Circuit, second or successive petitions that are improperly filed in district court must be
4 transferred to the Ninth Circuit.

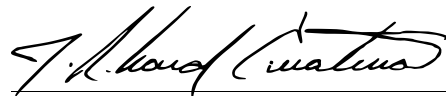
5 Ninth Circuit Rule 22-3(a) provides guidance:

6 Any petitioner seeking leave to file a second or successive 2254 petition or 2255
7 motion in district court must seek leave under 28 U.S.C. §§ 2244 or 2255. An
8 original and five copies of the application must be filed with the Clerk of the
9 Court of Appeals. No filing fee is required. If a second or successive petition or
10 motion, or application for leave to file such a petition or motion, is mistakenly
11 submitted to the district court, the district court shall refer it to the court of
12 appeals.

13 The Court recommends that this petition be referred to the Ninth Circuit and that the file
14 be administratively closed.

15 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
16 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
17 6. Failure to file objections will result in a waiver of those objections for purposes of de novo
18 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
19 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
20 October 26, 2012, as noted in the caption.

21 Dated this 3rd day of October, 2012.

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J. Richard Creatura
United States Magistrate Judge